IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

NOTICE OF MOTION NO.769 OF 2005

IN

ARBITRATION PETITION (L) NO.137 OF 2005

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M/s.Sonal Builders
and Contractors & Anr. ...Petitioners

v/s.

Cine Costume & Make Up
Artists Association ...Respondent

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Mr.R.V.Govilkar i/b Mr.K.H. Giri for the Petitioners.

Mr.G.D.Talreja for the Respondent.

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CORAM: D.K.DESHMUKH, J.

DATED: 25TH APRIL,2005

P.C.:

1. This is an application for condonation of delay in filing the petition under Section 34 of the Arbitration & Conciliation Act. The law provides three months time for filing the petition. The court is given power to condone delay of maximum period of 30 days. In the present case the award is dated 1-10-2003 and the Petition is lodged on 11-3-2005. According to the Petitioner, copy of the award was not delivered to him by the arbitrator after the award was made.

2. The Respondent, however, has placed material on record which shows that apart from the Respondent even the learned arbitrator sent a signed copy of the award to the Petitioner, which was not received by

him though intimation was given to him by the postal authority. That was in the month of January, 2004. Thus, the date of service would be January, 2004. The case of the Petitioner is that at that time he was not at the address at which the notices were given. Because he had received some threats from underworld and therefore he was moving from place to place. In the rejoinder the Petitioner states that from 1998 he was forced to be away from Mumbai till Mid 2004 and that he was not looking after his business during that period. But the same Petitioner in the reply filed in support of the Notice of Motion states that he obtained full occupation certificate from the Corporation in March, 2003. If the Petitioner was not looking after his business till mid 2004 he does not explain how he obtained the occupation certificate in March, 2003. The case put up by the Petitioner about his alleged absence for a long time from Mumbai cannot be believed. The Petitioner says that he came to know about the award for the first time on 5-10-2004. What is surprising is that though the Petitioner came to know that the award has been made against him on 5-10-2004, because of the execution being taken up by the Respondent, the Petitioner did not apply for a copy of the award

with the arbitrator for more than a month and the Petitioner claims the starting point of limitation is the date on which he received the certified copy of the award. In stead of approaching the arbitrator for a copy of award he applied to this court for a certified copy of the award.

3. In my opinion, in the facts and circumstances of the case, after coming to know of the award, it was the duty of the Petitioner to approach the learned arbitrator for a signed copy of the award. He did not do so and there is no explanation given for not doing so. In my opinion, therefore, looking from any point of view there is inordinate delay in filing the present petition. Notice of Motion is, therefore, disposed of.

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